



Property Improvement Alterations

The Property Improvement Alterations Rider was incorporated into the Loan Agreement (except for Seniors Housing) last November. There have been a number of comments to the Rider since then. A key take-away from these comments was that many borrowers believed the Loan Documents had always permitted them to make upgrades and improvements to their properties and that the Property Improvement Alterations Rider was placing new restrictions on them. However, the Property Improvement Alterations provision was intended to allow borrowers the opportunity to do the improvements and upgrades to existing Improvements that they previously could not do without the prior consent of the Lender.

Based on feedback and upon further review of the requirements, the Property Improvement Alterations provision has been revised and the new provisions became effective as of July 1, 2014. The following highlights some of the changes made to the Rider:

❖ **Minimum Occupancy:**

- **Fixed rate loans** – The greater of 85 percent or break even occupancy, rounded to the nearest percentage.
- **Floating rate loans** – The greater of 85 percent or the fixed rate break even occupancy, rounded to the nearest percentage.

❖ **Property Improvement Total Amount:** The aggregate amounts are tiered:

- Loans up to \$50M – The lesser of (i) 20 percent of the appraised value of the Property or (ii) \$10M
- Loans \$50M or greater – The lesser of (i) 15 percent of the appraised value of the Property or (ii) \$15M

❖ **Loans \$25M or Greater – Restriction on Amounts Outstanding at Any One Time:** To address substantive consolidation concerns, a subsection has been added to the Rider to provide that the outstanding Property Improvement Total Amount for services and/or materials that are due and payable may not exceed 10 percent of the original principal loan amount at any time during the term of the Loan.

❖ **Units Subject to the Property Improvement Total Amount:** Only improvements to residential dwelling units will be subject to the Property Improvement Total Amount limitation.

❖ **Requirements for Bringing Units Into Compliance:** The consequence of failing to comply with Minimum Occupancy requirements has been revised. If Property Improvements Alterations are ongoing which result in individual residential units not being available for leasing and occupancy drops below the Minimum Occupancy, then Borrower must do the following:

- Complete or curtail all pending Property Improvement Alterations to individual residential units in a timely manner until the Property satisfies the Minimum Occupancy requirement.
- Suspend any additional Property Improvement Alterations which would cause units to be unavailable for leasing until the Property satisfies the Minimum Occupancy requirement.
- Deliver to Lender, upon Lender's request, the Borrower's Certificate of Property Improvement Alterations Completion.

❖ **Borrower's Certificate of Property Improvement Alterations Completion:** A form of Borrower's Certificate of Property Improvement Alterations Completion has been created and will be attached as a Schedule to the Rider. Borrower will be required to deliver the certificate to Lender upon:

- Completion of the Property Improvement Alterations; and,
- Lender's request in the event occupancy has dropped below the Minimum Occupancy and Borrower is required to complete and curtail all pending Property Improvement Alterations.

Note: Exhibit F of the Commitment/Early Rate Lock Application will require Seller/Serviceicers to deliver this Certificate to Freddie Mac within 15 days of Freddie Mac's request.

❖ **Completion Guaranty and Recourse Carve-out:** The Completion Guaranty has been amended to clarify that the Guarantor will only be guarantying completion of the Property Improvement Alterations which have been commenced but not completed. In the event there is no guarantor, an additional recourse carve-out will be added for any loss or damage incurred as a result of any incomplete Property Improvement Alterations.